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FEB - 6 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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1:08CV000190 OWN WMM HC

IN RE: ERIC W. BURTON #FO2720
ON PETITION FOR FEDERAL HABEAS CORPUS

CASE NO: S152584

Plaintiff	,
-VS-	
DIRECTOR OF CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION	
Defendant	,

MOTION FOR
APPOINTMENT OF COUNSEL
PURSUANT TO 28 USC 2254
BASED ON MEMORANDUM AND
POINTS OF AUTHORITY

TO: THE HONORABLE COURT IN THE ABOVE CAUSE OF ACTION:

NOW COMES, ERIC WILTON BURTON #FO2720 defendant in the
above cause of action who moves this court for an Ex Parte Order for
appointment of Counsel to represent defendant's interest in the above
bona fide legal action and for which defendant has no other means to
gain meaningful access to the courts due to incarcerated status of
indigent defendant herein.

This motion is based on this Ex Parte Motion, on the attached
declaration, on the memorandum of points and authorities herein
on the papers and records filed in this matter and on such other
evidence presented to the court in support of this motion.

DATED: Jan 30-08

RESPECTFULLY SUBMITTED:

Eric W. Burton #FO2720
ERIC W. BURTON

DECLARATION

1. That I am the defendant in the within bona fide legal
 2 cause of action, am a poor indigent incarcerated prisoner, and have
 3 at risk threatened personal and/or property rights as a result of
 4 the within cause of action;

5. That declarant is a layperson, untrained in law, and
 6 as a result of poor, indigent, and incarcerated status is barred
 7 from access to the courts to protect personal and/or property rights
 8 as guaranteed by due process and equal protection clauses of both
 9 the state and federal constitutions;

10. 3. That declarant is forced to represent self in defense
 11 of the within suit, is without funds to employ counsel, and has no
 12 legal training, experience, access to legal materials and/or access
 13 to the courts necessary to adequately and reasonably protect declar-
 14 ant's present and future personal and/or property rights;

15. 4. That declarant is being harrassed by plaintiff herein
 16 in as much as declarant is indigent and incarcerated, unable to
 17 retain an attorney, and that without adequate representation and
 18 meaningful access to the courts declarant is likely to suffer adver-
 19 judgement and therefrom a significant issue of liability would arise
 20 impacting declarant's personal and/or property rights both present
 21 and in the future;

22. 5. That declarant has been incarcerated since 19 MARCH
 23 _____ , 19 2004 and will remain incarcerated through
 24 ^{Ex-Ex-Ex}
 25 approximately INDETERMINATE , 19 _____ ;

26. 6. That as a right guaranteed by the due process and
 27 equal protection clauses of the state and federal constitutions
 28 declarant has a right to the appointment of legal counsel in the

1 within cause of action based upon, (a) declarant as confronted with
2 a bona fide legal action threatening personal and/or property interest,
3 (b) declarant is indigent and in prison, (c) declarant plans
4 to defend from the action herein, and (d) adverse judgement would
5 affect declarant's present and/or future property rights;

6 7. That declarant is entitled to the appointment of coun-
7 sel and declarant does declare that such appointed counsel should
8 be awarded legal fees in accordance with standards within the com-
9 munity for similar cases;

10 8. That attorney fees should be ordered by this court to
11 be paid pursuant to, but not limited to, (a) Business and Profession
12 Code, Section 6210, (b) Government Code, Section 27706, and/or (c)
13 legal duty and obligation of law enforcement/correctional agency
14 to provide for the constitutionally mandated needs of wards remanded
15 to custody;

16 9. That without relief requested herein that declarant
17 will continue to suffer deprivations of constitutional and/or other
18 legal rights as stated above.

19 VERIFICATION

20 I have read the above statements and do declare upon
21 penalty of perjury that these statements are true and correct as
22 based upon information and belief. Executed this 30 day of
23 OCTOBER, ²⁰⁰⁷ at PO BOX 5246-CL-1321 GATEWAY CORR ATN, CA 93212
24 California pursuant to Code of Civil Procedure, Sections 446 and
25 2015.5.

Eric W. Burton #602720
26 ERIC W. BURTON
27 DECLARANT

MEMORANDUM AND
POINTS OF AUTHORITIES

INDIGENT PRISONER WHO FACES BONA FIDE LEGAL ACTION THREATENING INTEREST IS ENTITLED TO ACCESS TO COURTS AS GUARANTEED BY DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTIONS OF CALIFORNIA AND THE UNITED STATES. Yarbrough v. Superior Court, (1985) 39 C.3d 197; Payne v. Superior Court, (1976) 17 C.3d 908.

It is uncontrovertible that defendant herein is imprisoned, is indigent without funds to employ counsel, and faces a bona-fide legal action threatening personal and/or property interests by virtue of having to defend from this suit. Further, defendant is acting Pro Per in own defense without adequate training or experience, is without adequate access to legal materials, and is without meaningful and/or viable access to the courts. Woods v. Superior Court, (1974) 36 C.3d 811, Yarbrough v. Superior Court, (supra) 39 C.3d 197.

II

INDIGENT PRISONER WHO IS UNTRAINED AND/OR INEXPERIENCED IN CIVIL LAW SHOULD BE APPOINTED COUNSEL. Payne v. Superior Court, (supra) 17 C.3d 908.

In light of this bona fide legal action threatening defendant's personal and/or property rights, the court must appoint legal counsel in the instant case. Yarbrough v. Superior Court, (supra) 39 C.3d 197, 204.

Before denial of defendant's motion this court must at minimum hold a hearing and/or make factual determination using guidelines set down by the California Supreme Court in Payne v. Superior Court, (supra) 17 C.3d 908, 924; Yarbrough v. Superior Court, (supra) 39 C.3d 197, 203-204, 207.

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THE DECISIONS OF THE SUPREME COURT AND COURT OF APPEAL ARE BINDING AND MUST BE ACCEPTED BY THE TRIAL COURTS. Woods v. Superior Court, (supra) 36 CA 3d 811, 814; Auto Equity Sales, Inc. v. Superior Court, () 57 C.2d 450, 455.

The rule of stare decisis is a rule of jurisdiction.

Auto Equity Sales, Inc. v. Superior Court, (supra), citing Abeller v. District Court of Appeal, () 17 C.2d 280, 288.

IV

ATTORNEYS FEES SHOULD BE ORDERED PAID BY THIS COURT. 6th, 13th, and 14th Amendments to the United States Constitution.

It stands to reason that if defendant is entitled to appointed counsel, that such counsel is entitled to adequate and reasonable compensation equal to that afforded others in the community for similar services. 13th and 14th Amendments to United States Constitution; Yarbrough v. Superior Court, (supra) 39 C.3d 197, descent at 207 and continuing be Chief Justice Bird.

This court should order funds be provided from appropriate sources including, but not limited to, provisions pursuant to Business and Professions Code, Section 6210; Government Code, Section 27706; from the law enforcement/correctional agency of custod which is legal mandated to provided for constitutionally required needs of defendant just as food, clothing, shelter, medical and other needs must be provided for. Defendant's legal needs are simply an extension of other constitutionally protected rights which serves both the needs of the individual and society at large. Indeed, for the state to allow personal and/or property rights to be violated, which in this case could have far reaching impact on defendant's future earning and family ties, would transgress the

1 constitution. Under circumstances as presented herein surely the
2 state should afford defendant the protection afforded in criminal
3 proceedings leading to incarceration or the in prison repair of an
4 ingrown hangnail, contact visitation, mail censorship, or religious
5 practice.

6 V

7 LEGAL PAPERS SUBMITTED BY INDIGENT PRO PER
8 PRISONER UNTRAINED IN LAW MUST BE HELD TO
9 LESS STRIGENT STANDARDS THEN THOSE DRAFTED
10 BY MEMBERS OF THE BAR AND MUST BE VIEWED IN
11 LIGHT-MOST-FAVORABLE-TO-PRO-PER. Haines v.
12 Kerner, (1972) 404 U.S. 519; 92 s. Ct. 594.

13 CONCLUSION

14 Defendant to this suit is an indigent prisoner who is
15 untrained in law and being denied meaningful access to the courts.
16 Defendant has a constitutional right to meaningful access to the
17 courts and to appointment of legal counsel to protect personal
18 and/or property rights which are threatened by this bona fide legal
19 action. Defendant further enjoys the right to have legal counsel
20 compensated by whatever means ordered by this court.

21 PRAYER

22 WHEREFORE, Good Cause having been shown, this court should
23 grant the motion as follows:

24 1. declare defendant's rights as to issues raised herein;
25 2. order appointment of counsel to defend defendant in
26 the above cause of action;
27 3. order the payment of counsel appointed herein a sum
28 customary for such a case within the community to be paid from a
source determined by the court;
29 4. in the alternative, hold hearing(s) and/or otherwise

1 make findings of fact as to issues pertaining to appointment and
2 compensation of counsel to defend defendant in this suit;

3 5. order that all records pertaining to this motion be
4 sealed subject to inspection only upon order of this court after a
5 showing of good cause;

6 6. order such other and further relief as is just, pro-
7 per and equitable.

8 DATED: 10-30-2007

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RESPECTFULLY SUBMITTED:

Eric W. Burton #F02720

ERIC W. BURTON
DEFENDANT
IN PRO PER